

ER

In the United States District Court  
Eastern District of Pennsylvania

**William Ney, Individually and  
as Executor of the Estate of  
Loretta Ney,**

Plaintiff,

vs.

**Owens-Illinois, Inc.  
Asbestos Corp. Ltd.,**

Defendants.

**16 2408**

Civil Action No.

Formerly No. 1441, March  
Term, 2014, in the Court of  
Common Pleas Philadelphia  
County, PA

**FILED**  
**MAY 17 2016**  
By MICHAEL E. KUNZ, Clerk  
Dep Clerk

**OWENS-ILLINOIS, INC.'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. 1332, 1446, Defendant Owens-Illinois, Inc. ("OI") gives notice of removal of this action from the Court of Common Pleas for Philadelphia County, PA to the United States District Court for the Eastern District of Pennsylvania.

**GROUND FOR REMOVAL**

1. Removal is proper based on diversity of citizenship.
2. On March 11, 2014, Plaintiffs William Ney and Loretta Ney filed this product liability action in the Court of Common Pleas for Philadelphia County styled *Loretta Ney and William Ney, Husband and Wife, Plaintiffs v. Asbestos Corporation Limited, et al., Defendants, March Term, 2014, Cause No.*

1441 ("Complaint") (Exhibit 1). The Complaint is a "short form" complaint used in state court actions, which incorporates by reference a "Master Long Form Complaint," to allege claims for 1) Negligence and Outrageous Conduct, 2) Strict Liability, 3) Conspiracy, 4) Breach of Warranty, 5) Neighborhood and Household Exposure, and 6) Damages. On December 9, 2014, Plaintiffs amended the Complaint ("Amended Complaint") (Exhibit 2) after Loretta Ney's death to add an additional claim for Wrongful Death.

3. The Complaint and Amended Complaint allege that Plaintiff is a resident of the State of North Carolina.
4. Plaintiff's Complaint named four defendants that were diverse from Plaintiff. One defendant, Crown Cork & Seal Co., Inc., ("Crown"), was a citizen of the Commonwealth of Pennsylvania. The inclusion of Crown prevented OI from removing the case under 28 U.S.C. §§ 1332 and 1441(b)(2).
5. On April 5, 2016, Plaintiff voluntarily dismissed Union Carbide Corporation, and on April 18, 2016, Plaintiff voluntarily dismissed Crown from the case. Stipulations of dismissal as to Union Carbide Corporation and Crown were entered by the Court on April 21, 2016, and May 9, 2016, respectively. As a result, the only remaining defendants are OI and Asbestos Corporation Limited ("ACL") (collectively "Removing Defendants"). Neither OI nor ACL are citizens of the Commonwealth of Pennsylvania.
6. For diversity purposes, a corporation is deemed to be a citizen of its state of incorporation and the state with its principal place of business. 28 U.S.C. §§ 1332(c)(1).

- a. OI is organized under the laws of the State of Delaware and has its principal place of business in Ohio. Affidavit of Susan Gibbons (Exhibit 3).
  - b. ACL is a Canadian company, with its principal place of business in Canada. (Master Long Form Complaint, Exhibit 4, at ¶ 16.)
7. Plaintiff is a citizen of the State of North Carolina.
8. The amount in controversy, as stated in plaintiff's state court Complaint, is over \$100,000.00, which exceeds the \$75,000.00 jurisdictional threshold in 28 U.S.C. § 1332 (a).
9. This Court has jurisdiction under 28 U.S.C. § 1332 (a)(1) because there is complete diversity between the Plaintiff and Removing Defendants and the case meets the amount in controversy requirements. Thus, removal is proper under 28 U.S.C. § 1441.
10. Venue is proper in this Court under 28 U.S.C. § 1391 & 1446(b) because this Court is located in the federal judicial district that includes the Court of Common Pleas for Philadelphia County, PA, where Plaintiff filed the Complaint.
11. Under 28 U.S.C. § 1446(b)(3), if the case is not initially removable, a defendant has 30 days after the receipt of an "amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable." This Notice of Removal satisfies this procedural requirement because OI has filed it within 30 days of Plaintiffs voluntary, April 18, 2016, dismissal of Crown.

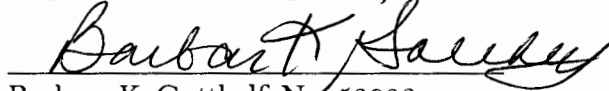
12. Removal based on diversity must occur within one year after the commencement of the state court action unless the exception in 28 U.S.C. § 1446 (c)(1) or the equitable tolling exception applies. *See A.S. ex rel. Miller v. SmithKline Beecham Corp.*, 769 F.3d 204, 211 (3d Cir. 2014) (holding removal after one year proper if equitable tolling applies). In this case, both exceptions apply. Plaintiffs did not have a valid claim against Crown, but nevertheless joined Crown for the sole purpose of preventing removal. Plaintiffs did not pursue a case against Crown and allowed the one-year time period to expire before voluntarily dismissing Crown. Either 28 U.S.C. § 1446 (c)(1) allows OI to remove the case outside of the one-year time frame or equitable tolling estops Plaintiffs from resisting remand.
13. Under 28 U.S.C. § 1446(b)(2)(A), ACL has consented to the Removal of this Action. (Exhibit 5.)
14. Under 28 U.S.C. § 1446 (a), OI has filed contemporaneously with this notice a true and correct copy of the process, pleadings, orders, and documents served in this case. (Exhibit 6.)
15. Under 28 U.S.C. § 1446 (d), OI has filed contemporaneously with this Notice a copy of the Notice of Removal in the Court of Common Pleas for Philadelphia County, PA.
16. By filing this Notice of Removal, OI does not waive any defenses that may be available to it.

WHEREFORE, Defendant Owens-Illinois, Inc. respectfully requests that this action be removed from the Court of Common Pleas for Philadelphia

County, PA to the United States District Court for the Eastern District of Pennsylvania under the authority in 28 U.S.C. § 1441(a).

Respectfully submitted,

**MCCARTER & ENGLISH, LLP**

A handwritten signature in cursive script, appearing to read "Barbara K. Gotthelf", is written over a horizontal line.

Barbara K. Gotthelf, No. 53832

MCCARTER & ENGLISH, LLP

Attorneys for Defendant

OWENS-ILLINOIS, INC.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 17<sup>th</sup> day of May, 2016, a true and correct copy of Owens-Illinois, Inc.'s Notice of Removal was served upon all counsel of record, per the attached counsel list, via ECF and electronic mail.

/s/ Barbara K. Gotthelf

Barbara K. Gotthelf, No. 53832  
McCARTER & ENGLISH, LLP  
Attorneys for Defendant  
OWENS-ILLINOIS, INC.

**FILED**  
**MAY 17 2016**  
MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep Clerk

***Loretta Ney v. O-I, et al.***

**SERVICE LIST**

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**COHEN/PLACITELLA/ROTH, P.C.**  
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Philadelphia, PA 19103  
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(215)-567-6019 (fax)  
[jgruhler@cprlaw.com](mailto:jgruhler@cprlaw.com)  
***Attorney(s) for Plaintiff***

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Janet E. Golup Esq.  
Nancy DeBasio  
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[jgolup@goldfeinlaw.com](mailto:jgolup@goldfeinlaw.com)  
[ndebasio@goldfeinlaw.com](mailto:ndebasio@goldfeinlaw.com)  
***Attorney(s) for Asbestos Corporation Limited***

## CIVIL COVER SHEET

5:16-cv-2408

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

WILLIAM NEY, individually and as Executor of the Estate of LORETTA NEY

(b) County of Residence of First Listed Plaintiff Forsyth County, NC  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Jacqueline P. Grubler, Esq.  
Cohen, Placitella & Roth, P.C.  
Two Commerce Square, 2001 Market St., Suite 2900  
Philadelphia, PA 19103  
215-367-3500

## DEFENDANTS

16 2408

OWENS-ILLINOIS, INC.,  
ASBESTOS CORP. LTD.

County of Residence of First Listed Defendant Wood County, OH  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Barbara K. Gotthelf, Esq.  
McCarter & English, LLP  
1600 Market Street, Suite 3900  
Philadelphia, PA 19103  
215-979-3836

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	

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- ☐ 1 Original Proceeding  
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## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332

Brief description of cause:  
injuries suffered from alleged household exposure to asbestos

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
05/17/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Barbara K. Gotthelf

MAY 17 2016

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ER

5:16-cv-2408

JS 44 (Rev. 12/12)

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Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4  
Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5  
Foreign Nation ☐ 6 ☐ 6

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28 USC 1332

Brief description of cause:

injuries suffered from alleged household exposure to asbestos

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DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

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(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/17/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Barbara K. Gotthelf

MAY 17 2016

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**ER**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

WILLIAM NEY, individually and as Executor of the  
Estate of LORETTA NEY

v.

OWENS-ILLINOIS, INC.  
ASBESTOS CORP. LTD.

CIVIL ACTION

**16      2408**  
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. (x)
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

May 17, 2016

**Date**

215-979-3836

**Telephone**

*Brian L. Gotthelf*  
**Attorney-at-law**

215-988-4308

**FAX Number**

Def. Owens-Illinois, Inc.

**Attorney for**

bgothelf@mccarter.com

**E-Mail Address**

(Civ. 660) 10/02

**MAY 17 2016**